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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| **In the Matter of** | ) | |
| | ) | |
| **Interconnection and Resale Obligations** | ) | **CC Docket No. 94-54** |
| **Pertaining to** | ) | |
| **Commercial Mobile Radio Services** | ) | |

**To: The Commission**

## REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG"), by its attorneys and pursuant to Section 1.415(d) of the Commission's Rules, hereby respectfully submits these Reply Comments in response to the various comments filed in response to the Public Notice released by the Federal Communications Commission ("FCC" or "Commission") on December 5, 1997 in the above-captioned proceeding.[1] RTG filed Comments in this proceeding on October 4, 1996 and January 5, 1998.

These Reply Comments deal primarily with the Comments filed by the Telecommunications Resellers Association ("TRA"). TRA advocates the adoption of a requirement that CMRS carriers offer automatic roaming to wireless resellers. There is no basis in law or policy for the adoption of such a requirement.

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[1] Public Notice, *Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks*, CC Docket No. 94-54, DA 97-2558 (released December 5, 1997) ("*Public Notice*").

RTG has discussed in its Comments how adoption of an automatic roaming requirement at this time would disserve the public interest. TRA argues that a general automatic roaming requirement will serve the public interest because CMRS consumers who travel outside their home regions are "effectively captive consumers." TRA Comments at p. 3. TRA contends that CMRS providers "may exploit this effective market power" by either providing automatic roaming at "exorbitant rates" or by denying such arrangements altogether. *Id.* Contrary to TRA's characterization, CMRS carriers do *not* possess market power over roamers in their markets. Cellular roamers generally have the choice to utilize either of two cellular networks. As newer technology comes to the marketplace, roamers with dual or tri-mode handsets may utilize the services of any CMRS (cellular, personal communications service ("PCS") or specialized mobile radio ("SMR")) provider in the roaming region. Roamers are no more "captive consumers" than long distance callers who are required to dial a 10XXX code to "dial around" a presubscribed long distance carrier. Even if the ability to choose from among various CMRS providers did not exist, TRA has provided no evidence in support of its contention that CMRS carriers will refuse to enter into roaming arrangements or overcharge for such services. Indeed, TRA admits that this contention is sheer conjecture.[2] RTG is aware of numerous cellular

[2] *See* TRA Comments, filed January 5, 1998 at 4 (speculating that because some of its members have experienced difficulty in obtaining satisfactory *resale* arrangements with PCS providers, "it is likely that similar difficulties would exist in the development of automatic roaming arrangements.").

providers who are willing to enter into roaming agreements with resellers. As RTG and other parties have repeatedly emphasized in this proceeding, absent evidence that the marketplace has proved ineffective in promoting competitive behavior with respect to CMRS roaming, it is premature to impose any kind of automatic requirement on CMRS providers.[3]

TRA claims that Sections 201(b) and 202(a) of the Communications Act of 1934 ("the Act"), as amended, require CMRS providers to offer automatic roaming to CMRS resellers on a nondiscriminatory basis. It argues that roaming is a common carrier communications service subject to the Section 201 prohibition against the denial of any communications service to any party[4] and the Section 202(a) prohibition against "unreasonable discrimination." This argument fails for two reasons. First, the provision of automatic roaming is not a "communications service" subject to Section 201 or 202. As AirTouch correctly points out, automatic roaming, unlike manual roaming, does *not* involve a direct relationship between a carrier and the person using the carrier's network.[5] Rather it involves a billing contract between two CMRS providers. RTG agrees that automatic roaming is a billing function and *not* a communications service.

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[3] *See, e.g.,* the recently filed Comments of United States Cellular Corporation ("USCC"), the Cellular Telecommunications Industry Association ("CTIA"), AirTouch Communications, Inc. ("AirTouch"), GTE Service Corporation, Sprint Spectrum L.P., BellSouth Corporation ("BellSouth"), Southwestern Bell Mobile Systems, Inc. and Pacific Bell Mobile Services in this proceeding.

[4] TRA states that "Section 201(b) of the Act prohibits any common carrier, including CMRS providers, from unreasonably denying any communications service, including automatic roaming, to any party." RTG believes that TRA intended to cite Section 201*(a)* for this proposition.

[5] AirTouch Comments, filed January 5, 1998, at p. 9.

Second, even if automatic roaming is deemed by the Commission to constitute a communications service subject to Title II of the Act, a CMRS carrier may reasonably discriminate in its provision.[6] There are a myriad of reasonable justifications for discriminating between non-similarly situated entities in rates, terms, and practices in connection with roaming agreements. For example, a CMRS carrier in rural Wyoming which provides service to a subscriber to a New York City carrier bears the risk of a higher incidence of fraud resulting from service to the New York carrier's subscribers than to the Wyoming carrier's subscribers. The Wyoming carrier's roaming agreement with the New York carrier may accordingly reasonably reflect this increased fraud risk in its roaming charges. Similarly, there may be various geographic, technical[7] and economic factors that affect the cost of providing roaming service to different carriers.[8] Consumers are protected against unreasonable discrimination through the availability of existing Section 208 complaint procedures.

Should the Commission nonetheless choose to require the provision of automatic roaming, such a requirement should not apply with respect to resellers. A requirement that CMRS carriers provide automatic roaming to wireless resellers would unfairly impose significant costs and burdens on facilities-based carriers. Pursuant to such a requirement, a facilities-based

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[6] *See* 47 U.S.C. Section 202 (prohibiting only "unreasonable" discrimination).

[7] *See, e.g.,* Comments of Omnipoint Communications, Inc., filed January 5, 1998, at p. 7 (automatic roaming not technically compatible with "pre-pay" debit service).

[8] *See, e.g.,* Comments of CTIA, filed January 5, 1998, at p. 2 ("Inter-carrier roaming agreements are complex contracts that are the product of detailed negotiations. Rates and terms vary depending on numerous factors including proximity of the roaming markets, volume of anticipated traffic exchanged between systems, and the fraud prevention and detection methods in place for the respective carriers.").

carrier would be required to separately enter into agreements with multiple resellers. The expense in entering into a large number of such agreements would not justify the minimal amount of roaming revenue that would result from such agreements. In the case of many rural carriers, a roaming agreement with a distant carrier may result in a monthly bill for one or two customers totaling less than ten minutes of usage. Payment of such charges does not even provide compensation for the administrative cost of billing such charges, much less the other costs involved.

Customers of resellers are already entitled to roam through roaming agreements negotiated with the reseller's underlying facilities-based carrier. Through its request for automatic roaming, TRA is attempting to elevate itself to the status of a CMRS carrier. If resellers are to be treated as a CMRS carrier for roaming purposes, regulatory parity demands that they also be subject to the same regulatory obligations (*e.g.*, the CMRS spectrum cap[9]) as all CMRS licensees. To do otherwise is to tilt the CMRS playing field in favor of resellers. Such a result creates a disincentive for facilities-based CMRS carriers to devote their competitive energies to the provision of roaming service to the ultimate detriment of CMRS customers everywhere. It also ignores the reciprocal nature of the roaming system.[10]

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[9] *See* 47 C.F.R. Section 20.6 (1996).

[10] *See* Comments of BellSouth, filed January 5, 1998, at p. 14.

For the foregoing reasons, RTG requests that the Commission refrain from adopting any automatic roaming requirement at this time, and, at a minimum, that it clarify that wireless resellers are not entitled to any type of mandatory roaming.

Respectfully submitted,

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January 20, 1998

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## Certificate of Service

I, Jacqueline Jenkins, an employee in the law firm of Bennet & Bennet, PLLC, hereby certify that a copy of the foregoing Reply Comments of the Rural Telecommunications Group have been served, via first-class, postage pre-paid mail, this 20th day of January 1998:

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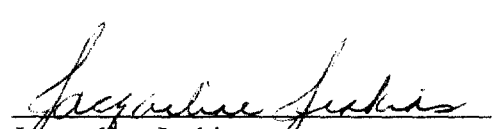

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